

TAX REVIEW COMMISSION

MINUTES OF THE FIFTH MEETING OF THE
TAX REVIEW COMMISSION
HELD AT 830 PUNCHBOWL STREET, ROOM 221
IN THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII, ON TUESDAY, OCTOBER 25, 2005

The Commissioners of the Tax Review Commission met at the Department of Taxation, Director Conference Room, in the City and County of Honolulu, State of Hawaii, on Tuesday, October 25, 2005.

Members Present: Chair Isaac Choy, Manoa Consulting Group, LLC CPA's
Vice-Chair Ronald Heller, Torkildson Katz Fonseca Moore &
Hetherington, AAL, ALC
Christopher Grandy, UH Manoa, Public Administration Program
Carolyn Ching, Carolyn L. Ching CPA
John Roberts, Niwao & Roberts, CPA's

Absent: Lon Okada, Hawaiian Electric Industries, Inc.

Staff: Tu Duc Pham, Bernard Wilson, Josephine Malama

Other: Diane Erickson, Department of Attorney General
Peter Fritz, Chun Kerr Dodd Beaman & Wong
Lowell Kalapa, Tax Foundation of Hawaii
Tom Smyth, DBEDT
Titin Liem, DOTAX
Robert Hoffman, DOTAX (effective 10/31/05)

CALL TO ORDER

Chair Isaac Choy called the meeting to order at 10:00 a.m.

It was moved by Dr. Grandy and seconded by Mr. Heller to amend the agenda to add **Old Business** to follow Communication to the Commission. The motion was carried unanimously.

APPROVE MINUTES FROM PREVIOUS MEETING

Chair Choy reported that on page 3, the outside study was changed from the matrix form to an outline form. The context is the same. He asked if there was any objection to the change in format. There was none.

It was moved by Ms. Ching and seconded by Mr. Heller to approve the minutes of October 17, 2005. The motion was carried unanimously.

COMMUNICATION TO THE COMMISSION

- A. Draft copies were distributed of the Summary of Previous Tax Review Commission Recommendations. Chair Choy explained that this is a very rough synopsis of the past TRC findings that Mr. Wilson put together real fast, therefore, it may contain typo errors. A final copy will be prepared later. Homework - read the four pages draft summary for comment at the next Commission meeting.
- B. Copies were distributed of the power point slides on the Sunshine Law. Dr. Grandy and Lon Okada attended the Sunshine Law Seminar last week. Dr. Grandy was asked to give a report on the seminar. The following information was shared.
- Intent of the law is to provide the public the opportunity to participate in the governmental process as fully as possible – implications for having descriptive agenda and accurate minutes, etc. were emphasized.
 - Board business constitutes basically anything that falls within our purview of consideration.
 - Two board members may discuss board business outside of a meeting if no commitment to vote is sought or made. This, however, cannot be done serially. If the two had a conversation about some item pending before the board, neither could have conversation with any of the other members. The topic would have to be taken up at a meeting to which the public has access.
 - Two or more board members, but less than a quorum, may be constituted as a task force or sub-committee to investigate an issue of relevance to board business. Doing that would involve three separate formal board meetings. One meeting to set up the task force or committee, second meeting to report its findings, and third meeting for the board, as a whole, to deliberate and take action on the matter. The last two meetings, involving report findings and action taken, cannot happen at the same meeting. There has to be time in between.
 - Two or more board members, but less than a quorum, may be assigned by the board to present, discuss and negotiate any position adopted by the board at a regular meeting. For an example, when it comes time to report to the legislature or a legislative committee, the board may constitute two or more members, but less than a quorum, to go and make a presentation of the findings and recommendations. This would be an exception to the Sunshine Law that does not need to be noticed. If we want to have a meeting that does not comply with the Sunshine Law, we will have to have less than a quorum and only discuss issues that have already been adopted.
 - In question and answer about these exceptions, OIP's position is if some of us, intentionally or not, show up at a community meeting and there were more than two

members, someone would have to leave because as Commissioners we do not lose our hats.

- With respect to testimony, the public must be allowed to testify on any agenda item either in writing or oral. Testimony may be anonymous if the person testifying requests that. The board can limit the time to testify by rule if it wants to. The board can adopt such a rule and not have to exercise it every time. The public does not have the right to engage in discussion with the board members.
- Video conferencing is okay but is pretty difficult because there has to be public notice and audio/visual capability at each location that a board member will be at and public access to those locations. The video locations have to be made public in the notice. If communication goes down at any one of the locations, the meeting must end.
- The Commission may go into executive session or executive meeting, which means closing the doors to the public, only for certain specified purposes. There are eight purposes, most of them dealing with personnel or legal issues consulting with an attorney. In general, we should give notice on the agenda where we might go into executive session and indicate the subject matter. A two-third vote of the board members present is required for each item to be discussed in executive session. (Per Mr. Smyth, if TRC meets with the Governor, the Sunshine Law does not apply.)
- Agenda – list all items intended to be discussed. Items should be in detail so the public knows what we are looking at and have a chance to decide if they want to attend or not. After filing the agenda, we may amend it by a two-third vote of the board's potential members. We cannot add an item of "major importance" or "that affects a significant number of people". (A sample of a wrong agenda and a right one were reviewed with discussion.)
- Minutes must be released within thirty calendar days whether they are approved or not. It should be marked **Draft** if it has not been approved. Minutes must be taken at executive meetings, which do not have to be released, as long as doing so would defeat the purpose of going into executive session.

At this time, the Chair expressed that he is personally against executive sessions because he attends the Board of Accountancy meeting all the time and gets kicked out of the room at least once a month. He is very curious about what goes on behind the closed door. It was noted that the Sunshine Law is self-policing and he wants the Tax Review Commission to be in compliance with the spirit of the law.

Mr. Bob Hoffman was introduced as the new Research Analyst for the Tax Review Commission. He will start work on October 31, 2005.

OLD BUSINESS

Homework Assignment

6. Eliminate Corporate Income Tax and Franchise Tax: two scenarios
 - completely eliminate both the corporate income tax and franchise tax
 - completely eliminate the corporate income tax and reduce the franchise tax by some amount that approximates how much we reduce the corporate income tax
7. Eliminate personal income tax – no discussion was made on this subject

The Chair commented that as he sees the report evolving, we have a good mix of regurgitating all the past recommendations of the TRC and that we follow a traditional approach of let's look at certain areas of the law. Eliminating corporate income tax and personal income tax is a "think about" – something that is more futuristic.

There are five topics for external study. Dr. Grandy remarked that only four were listed. Mr. Wilson responded that General Excise Tax Exemptions was the fifth. Chair Choy would like to establish subcommittees to be responsible to build the Request for Proposal for each of these studies. He asked for volunteers, not more than three members per subcommittee. He suggested the members think about what subcommittee they want to sit on while we continue on the meeting.

Request for Proposal

Draft copies, with Mr. Heller's input, were distributed of the RFP for Economic, Revenue, and Distribution Impacts of the General Excise and Use Taxes (suggestions #1 and #14 were combined). This study will focus on the economic and distribution aspects of the General Excise Tax and Use Tax (GE/UT), as well as its revenue stream. Particular emphasis will be devoted to the sensitivity of these factors to given changes in the actual tax rate, whether directly or through county surcharges.

The main topics within this study include county surcharges on General Excise Tax broken down to economic impact measured by revenue, jobs, output and distribution of the tax burden, specifically for Honolulu county, also considering things like effects of increased government spending (federal as well as local). We specifically requested an analysis of the distribution of the tax burden paid by different income levels (e.g., by quintiles). We also requested an analysis of the impact on neighbor island counties, presuming that Honolulu County had the 4.5% tax rate in effect.

Per Dr. Pham, the scope of detailed description may be too broad, beyond what an economist or researcher would want to take on for a modest amount and limited time. Most of the RFP information will be on template, however, the subcommittees need to look over the

general description and detailed description to make sure that we touch on all the points we want covered. We also need to keep in mind what is realistic in terms of submitting this for bid with consideration to time and resources constraints. Mr. Wilson pointed out that the reason for doing these outside researches is because of the need for economic studies.

Chair Isaac asked if it would be okay to have public participation in the RFP building process? Because of the timeframe, Mr. Wilson did not think it would be a good idea. Also, because it is a competitively bid upon document, it should not be made available beforehand. Because our minutes are available to the public, this information is readily accessible. It was noted that if we go through the RFP process, this document should not be given out earlier because whoever receives it will be disqualified from bidding.

Per Dr. Grandy, this Commission should be prepared for the possibility that we may have some difficulty in finding people, qualified people, who would want to take the time to do this kind of work, considering our limited budget. Question was asked how would we advertise for these studies? Suggestions were DOTAX website, State Procurement website, UH website, national tax organizations, prior consultants who prepared studies for the Commission, and Star-Bulletin.

Mr. Wilson pointed out that on page 5, under Financial Information, there is a section for total proposed cost and cost by major project phase. If a vendor decides to handle certain parts incrementally, we should be able to look at the cost because it would be broken down by major project phase. The subcommittee can further define this section. Mr. Wilson will work with the subcommittees through e-mail.

Chair Choy reiterated that everybody has a taste of the work the subcommittees will be doing after hearing the presentation. You will work with staff to develop the RFP and put it out for bid without having to come back to the Commission for approval. If you are interested in a certain proposal, you may want to sit on that particular subcommittee so you can make sure that the specifications address your concerns. Also, the subcommittees will make their recommendation on the proposals since they are closest to the subject. Dr. Grandy noted that the subcommittees should realize there would be additional work down the road in terms of serving on the selection process.

It was moved by Dr. Grandy and seconded by Mr. Roberts that we create subcommittees to finalize the Request for Proposal for each external study without going back to the Commission for approval. The motion was carried unanimously.

The following subcommittees were created and membership established. It was agreed to combine the elimination of corporate income, franchise and personal income taxes into one study instead of two as originally written.

- Surcharges on General Excise Tax and Use Tax
Chris Grandy, Ron Heller, Carol Ching
- Elimination of Corporate Income Tax, Franchise Tax, and Personal Income Tax
Lon Okada, John Roberts, Isaac Choy
- Tax Credits for High Tech and Research Development
Chris Grandy, Carol Ching, John Roberts
- General Excise Tax Exemptions, including Fundraising for Non-Profits
Ron Heller, Isaac Choy

It was moved by Mr. Heller and seconded by Dr. Grandy to accept the subcommittees and membership as stated above. The motion was carried unanimously.

PRIORITIZE INTERNAL (DOTAX) TOPICS FOR STUDY/RESEARCH

The internal topics for study/research were prioritized according to the following matrix. Two additional studies were added #35 and #36.

PRIORITIZATION OF INTERNAL STUDY/ RESEARCH

RATING	STUDY	INSIDE	OUTSIDE	CATEGORY
	1. Effect of county surcharges on general excise Tax a. Economic impact b. Revenue impact c. Distribution impact		X	IV
A	2. Review of past TRC proposal and which have been adopted over time. a. Prepare comprehensive chart	X		IV
A	3. Collect past TRC recommendations repeated from Commission to Commission. a. Prepare comprehensive chart	X		IV
	4. Review of benefit/cost studies for selected recent tax credits: high tech and research & development a. Economic benefit b. Economic liability/cost c. Transparency		X	IV

A	5. Effects of general excise tax exemptions. a. Tax expenditure	X	X	IV
A	6. Effects of eliminating corporate and franchise taxes. a. Domestic vs Foreign	X	X	IV
A	7. Effects of eliminating personal income tax.	X	X	IV
A	8. Review of overall taxes – progressive and regressive a. Study of progressive and regressive for different types of taxes	X		IV
C	9. Review of non-profit, charitable and estate/inheritance policies a. Be sure to distinguish charities from not-for profit	X		IV
B	10. Effects of earned income tax credit a. Senator Carol Funkunaga will give us testimony from 3 pt consulting.	X		IV
B	11. Effects of increasing standard deductions.	X		IV
A	12. Effects of food/drug tax credits for taxpayers under \$40,000 adjusted gross income (federal).	X		IV
B	13. Expand income tax brackets by 25%	X		IV
B	14. General excise tax – Sales tax a. What is equivalent percentage for converting the 4% GET to a sales tax?		X	IV
A	15. Updating "Is Hawaii's Tax System Adequate" report by James Mak and Shamsuddin Ahmad		?	IV
B	16. "Budget Stabilization Fund" report by Marcia Sakai		?	IV
C	17. Unemployment/workmen's compensation		?	IV
	18. Imposition of a statute of limitation on the collection of assessed income, general excise, and trust fund (HRS 235-64) taxes...a ten year limitation would conform to federal law			VI

	19. Income tax compliance for HARPTA non-residence alien income tax return			VI
	20. Compliance for out of state lessors.			VI
	21. Evaluate insurance commission tax			V
	22. Could the S-Corp tax form be simplified			VI
	23. Reduce or eliminate the State gas tax for a given period of time			V
	24. The three-year statute of limitations on assessment of the GET should not run from the filing of the annual reconciliation GET return (Form G-49)			VI
	25. Re-opening expired statutes of limitations to assess income tax and GET should be prohibited			VI
	26. Private rulings, advice, and settlements by the Department should be made public, the same as the IRS ruling			VI
	27. Settlements of tax disputes should be made public			VI
	28. Attorney General opinions and memos should be made public on a redacted basis			VI
	29. Adopt IRC & 7430 on award of court costs and fees where taxpayer substantially prevails			VI
	30. Establishment of Appeals Office trained to settle cases			VI
	31. Mediation of audits			VI
	32. Board of Review cases should be posted			VI
	33. Burden of proof in court proceedings should conform to IRC & 7491			VI
	34. Right of taxpayer or representative to participate in interview of witnesses			VI

	35. Certification process for the high tech credit			
	36. Processing EFT payments for "new business"			

NEW BUSINESS

Mr. Smyth reported that the Economic Momentum Commission met and reviewed twenty-five ideas. They clustered five. There was no tax issue in the twenty-five; therefore, there is no direct effect on what the Commission is doing. He shared some information from the President Advisory Panel Report such as considerable change in the mortgage interest deduction. By some real interesting manipulations, AMT would go away, and earned income tax credit would be combined with childcare credit for work credit (he will give Mr. Wilson some materials on this that explains the numbers). There has been very little coverage on elimination of state and local tax deduction against federal income tax – articles tend to focus on particular things depending on who’s writing about them. Most of these issues are far down the line. There is a major simplification called 1040 Simple being proposed, which will make the tax paperwork a lot easier. The final report is due out on the 1st. When he gets the report, he will try to summarize it and give copies to the Commission. Chair commented that some of these proposals are far-reaching and futuristic. However, this may be a guide for us that sometimes we to need think outside of the box.

Chair Choy thanked everyone for their hard work, comments and time put into this Commission.

ANNOUNCE NEXT MEETING

The next meeting is scheduled for November 29, 2005, at 10:00 a.m. in the Tax Director Conference Room.

Mr. Roberts and Dr. Grandy reported that they would not be able to make the December meeting. The Chair will reschedule the December meeting.

ADJOURNMENT

It was moved by Mr. Heller and seconded by Ms. Ching to adjourn the meeting at 11:40 a.m. The motion was carried unanimously.